

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

E
P/S

74-2656

IN THE
United States Court of Appeals
For the Second Circuit

No. 74-2656

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

against

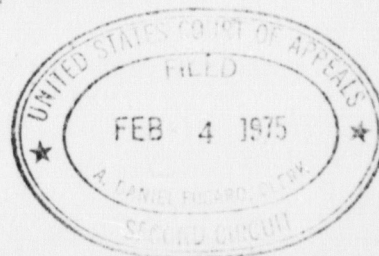
SALVATORE POLISI,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

APPELLANT'S APPENDIX

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Attorneys for Defendant-Appellant
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New York, New York 10036
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DOCKET ENTRIES

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

v.

No. 72 CR 390

EDWARD PRAVATO and
SALVATORE POLISI,

Defendants.

-----X

PROCEEDINGS

4- 4-72 Before TRAVIA, J. - Indictment filed.

4-10-72 By TRAVIA, J. - Petition for Writ of Habeas
Corpus Ad Prosequendum as deft. EDWARD PRAVATO
filed/issued.

4-20-72 Before TRAVIA, J. - Case called. - Defts. &
counsels present - court assigns Edward Kelly
of Legal Aid as counsel for deft. Pravato -
Order signed - Defts. waive reading of Indict-
ment and each enters a plea of not guilty - Bail
continued as to deft. Polisi and \$5,000 personal
bond for deft. Pravato - 30 days for Motions -

4-20-72 Writ returned and filed - Executed (Pravato).

4-20-72 By Travia, J. - Order appointing counsel filed
(Pravato).

4-20-72 Notice of Appearance filed (deft. Polisi).

5-11-72 Government's notice of readiness for trial filed.

5-12-72 Files 71M1101 and 72M614 inserted into criminal file.

5-18-72 Before NEAHER, J. - Case called - Pre Trial conference held and continued to June 14, 1973.

5-30-72 Notice of Motion filed, ret. June 9, 1972, for an order to have the New York State Dept. of Correctional Services send a copy of defts. complete medical and psychiatric file to defense counsel.

6- 9-72 Before NEAHER, J. - Case called & adjourned to 6-12-72.

6-12-72 Before NEAHER, J. - Case called on defts. Motion for copy of medical file to defense counsel, etc. No opposition - motion granted (see Order on back of motion papers).

6-12-72 By NEAHER, J. - Motion granted - Order to be submitted.

6-13-72 By NEAHER, J. - Order filed that the New York State Dept. of Correctional Services send a copy of the complete medical and psychiatric file of deft. PROVATO to the offices of the Legal Aid Society, defense counsel in the aboe (sic) case, etc. (copy to Legal Aid).

6-16-72 Before NEAHER, J. - Case called - Pre Trial conference held and continued to June 29, 1972.

6-29-72 Before NEAHER, J. - Case called. Pre-Trial conference held & continued to October 4, 1972.

6-30-72 By NEAHER, J. - Order filed that deft. PROVATO be committed to the Medical Center for Federal Prisoners at Springfield, Mo. to be examined as to his present mental condition by at least one qualified psychiatrist not to exceed 60 days

and that a report be rendered to J. Neaher and when such examination shall have been completed the deft., if sane, shall be returned to the custody of the U.S. Marshal, etc. (T-18:4244)

9-28-72 Petitioner for Writ of Habeas Corpus Ad Testificandum filed (Christopher)

9-28-72 By NEAHER, J. - Writ issued, ret. Oct. 16, 1972 (Christopher)

10-17-72 Writ ret'd. and filed - Executed.

12-11-72 Before NEAHER, J. - Case called - Set down for trial 1/22/72 at 2:00 P.M.

12-26-72 Psychiatric report filed re deft Provato received from Chambers of J. Neaher with reply dated Dec. 22, 1972 from Judge Neaher to Hon. Robert Morse and Simon Chrein of Legal Aid Society.

1-22-73 Before Neaher, J. - Case called - adjd. to Feb. 15, 1973.

2-15-73 Before NEAHER, J. - Case called - adjd. to 2/20/73.

2-20-73 Before NEAHER, J. - Case called - Trial set for 3/5/73.

2-27-73 Petition for Writ of Habeas Corpus Ad Prosequendum filed.

2-27-73 By NEAHER, J. - Writ issued, ret. 3/1/73.

5-10-73 Notice of Motion filed for suppressing evidence (ret. June 11, 1973 - Pravato)

5-30-73 Petition for Writ of Habeas Corpus Ad Prosequendum filed (Pravato)

5-30-73 By Neaher, J. - Writ issued ret. June 8, 1973
(Pravato)

6- 1-73 Before NEAHER, J. - Case called - Deft. POLISI
and counsel present - Adj. to Sept. 10, 1973.

6-11-73 Writ ret. and filed. Unexecuted, (PRAVATO)

8-31-73 Deft's motion to dismiss the indictment filed.
(PRAVATO)

8-31-73 Notice of motion filed. re: failure to afford
speedy trial (PRAVATO) returnable 9/10/73

9- 6-73 Petition for Writ of Habeas Corpus Ad Prose-
quendum filed (Pravato)

9- 6-73 By WEINSTEIN, J. - Writ issued, ret. 9-10-73

9-10-73 Before NEAHER, J. - Case called - adj. to 9-24-73
for trial. Motion by defts for suppression and
for dismissal of the Indictment adj. to 9-24-74
at 10:00 a.m.

9-20-73 By NEAHER, J. - Order filed that the deft. be
examined by Dr. Martin Lubin, of Booth Memorial
Hospital, Flushing, N.Y. at the Federal House
of Detention, as to his mental condition, etc.

9-21-73 Govts. affidavit in opposition to defts motion
for a speedy trial. (EDWARD PRAVATO)

9-24-73 Writ ret. and filed - executed (Pravato)

9-24-73 Before Neaher, J. - Case called - adj. to
Oct. 23, 1973.

10-23-73 Before NEAHER, J. - Case called on motion to
suppress and for certain records, etc., adj.
to Nov. 2, 1973 at 10:00 am for report.

11- 5-73 Stenographers transcript filed dated Jan.
 22, 1973.

11- 7-73 Stenographers transcripts filed dated Dec. 11,
 1972 and Feb. 16, 1973 respectively.

11- 8-73 Stenographers Transcript dated 2-20-73 and 6-
 12-72 filed.

1- 2-74 Stenographers Transcript of 10/23/73 filed.

1-16-74 By NEAHER, J. - Memorandum and Order filed
 denying motion to dismiss the Indictment. The
 case is hereby placed on 72 hours call status
 for trial. (EDWARD PRAVATO)

1-29-74 Before NEAHER, J. - case called - set for Trial
 March 11, 1974.

2-20-74 Petitioner for Writ of Habeas Corpus Ad Prose-
 quendum filed (PRAVATO)

2-20-74 By NEAHER, J. - Writ issued, ret. March 11,
 1974 (PRAVATO)

3-11-74 Notice of reneal of motion to dismiss filed.
 (PRAVATO)

3-11-74 Before NEAHER, J. - Case called - Respectfully
 referred to Judge Mishler.

3-11-74 Before NEAHER, J. - Case called - defts &
 counsels present - adjd. to Mar. 18, 1974
 for motion to suppress.

motion to suppress photo denied - Hearing on
 motion to suppress - hearing ordered and begun -
 hearing held and concluded - Decision reserved.

3-19-74 Before NEAHER, J. - case called - hearing re-
 sumed - deft. Polisi's motion to suppress -
 motion denied - Govts motion to dismiss count
 3 - Granted - Trial cont'd to March 20, 1974.

3-20-74 Before NEAHER, J. - Case called - Defts. and
 counsel present - Trial resumed. Jurors selected
 and sworn - Trial cont'd to 3-21-74.

3-21-74 Before NEAHER, J. - Case called - Defts and
 counsel present - Trial resumed. Each deft.
 moves to dismiss and for a directed verdict -
 Motion denied - Each deft. rests - Both sides
 rest - Trial cont'd to 3-22-74.

3-22-74 Before NEAHER, J. - case called - trial resumed -
 Jury returned at 6:05 PM and rendered its ver-
 dict of guilty on counts 1 and 2 as to both
 defts. - jury polled and jury discharged -
 sentence adjd. without date - bail cont'd as
 to deft. Polisi - deft. Pravato in custody.

3-22-74 By Neaher, J. - Order of Sustenance filed (14
 persons)

3-26-74 Writ ret'd and filed - executed (PRAVATO)

4-5-74 Stenographers Transcript dated 3-18-74, 3-19-74,
 3-20-74, 3-21-74 and 3-22-74 filed.

4-22-74 Voucher for Expert Services filed (PRAVATO).

5-24-74 Petition for Writ of Habeas Corpus Ad Prose-
 quendum filed.

5-24-74 By NEAHER, J. - Case called - Defts. and counsel
 present - Deft. POLISI sentenced to study and

report pursuant to T-18, U.S.C. Sec. 4208(b) - Execution of sentence stayed until 6-3-74 at 10:00 A.M. - Deft. PRAVATO sentenced to imprisonment for a period of 20 years on count 1 and 20 years on count 2 pursuant to T-18, U.S.C. Sec. 4208(a)(2) - sentences to run concurrently and to run concurrently with sentence deft. is now serving - Clerk to filed(sic) a notice of appeal without fee.

5-31-74 Judgment and Commitment filed - certified copies to Marshal (POLISI).

5-31-74 Judgment and Commitment filed - certified copies to Marshal (PRAVATO)

5-31-74 Notice of Appeal without fee filed (PRAVATO)
Financial affidavit filed.

5-31-74 Docket entries and duplicate of notice of appeal mailed to court of appeals (PRAVATO)

6-3-74 Writ ret'd and filed - executed (PRAVATO)

6-5-74 Certified copy of Judgment and Commitment ret'd and filed - deft. delivered to Federal Detention Headquarters (PRAVATO)

6-14-74 Certified copy of Judgment and Commitment ret'd. and filed - deft. delivered to U.S. Medical Center at Springfield, Mos. (PRAVATO)

6-17-74 Order received from court of appeals and filed that record be docketed on or before 6-20-74 (PRAVATO)

6-20-74 Stenographers Transcribed dated 3-21-74 filed.

6-20-74 Record on appeal certified and handed to S. Sadowitz for delivery to the Court of Appeals (Pravato)

6-21-74 Acknowledgment received from the Court of Appeals for receipt of Index to Record (Pravato)

6-28-74 Before NEAHER, J. - Case called - Deft. not present - Reported he is in hospital - On application of AUSA Kaplan Bench Warrant ordered - issued.

7- 8-74 Before Platt, J. Case called - Deft. produced in court on bench warrant. Bench warrant vacated - Adj'd. to 7-9-74 at 12:45 P.M. (POLISI)

7- 9-74 Before PLATT, J. - Case called - Deft. and counsel present - Referred to NEAHER, J. (SALVATORE POLISI)

7-24-74 Certified copy of Judgment & Commitment ret'd. and filed - deft. Salvatore Polisi delivered to Federal Detention Headquarters.

8- 8-74 Stenographers transcript dated June 4, 1973 filed.

9- 3-74 Letter from U.S. Penitentiary, Lewisburg dated 8-23-74 file re: request for 60 day extension of study and report of deft. POLISI - Extension (sic) granted by Judge Neaheer on bottom of letter.

10-15-74 Stenographers transcript dated 5/31/74 filed.

10-16-74 Bench warrant ret'd. and filed - vacated (deft. Salvatore Polisi)

11-13-74 Stenographers Transcribed dated 6/4/74 filed.

12- 9-74 Copy of Opinion and Judgment filed received from the Court of Appeals affirming the judgment of this court and that the sentence under Count One be vacated. (Deft. Pravato)

12-13-74 Before NEAHER, J. - Case called - deft. POLISI & counsel G. Shargel present - application was made by counsel for the deft for new trial, etc. Motion denied - deft is sentenced to imprisonment for 8 years on count 2 pursuant to 18:4208(a)(2) Note: Count (1) to be merged into count (2). Court recommends that the deft. be incarcerated in a Hospital, Springfield Medical Center, Springfield, Missouri. Deft. moves for reduction of bail pending appeal. Court denied the application. Atty. for the deft. to file Notice of Appeal.

12-13-74 Judgment & Commitment filed - certified copies to Marshal. (POLISI)

12-16-74 Notice of Appeal filed (Polisi)

12-16-74 Docket entries and duplicate of Notice of Appeal mailed to the C of A together with Form A (POLISI)

12-17-74 Record returned from the Court of Appeals (Pravato) Acknowledgment mailed to C of A.

12-18-74 Certified copy of Judgment and Commitment ret'd. and filed - deft delivered to U.S. Penitentiary at Lewisberg, Pa. (POLISI)

12-24-74 Record on appeal certified and mailed to Court of Appeals (POLISI)

A TRUE COPY

DATED: 12/24/74

LEWIS ORGEL

By: _____
DEPUTY CLERK

INDICTMENT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
-----X
UNITED STATES OF AMERICA,

-against-

72 CR 390

EDWARD PRAVATO and
SALVATORE POLISI,

Defendants.

-----X

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 3rd day of May, 1971, within the Eastern District of New York, the defendants EDWARD PRAVATO and SALVATORE POLISI knowingly and wilfully, by force, violence and intimidation did take from the person and presence of employees of the Franklin National Bank, 249-46 Horace Harding Boulevard, Queens, New York, approximately Twenty Five Thousand One Hundred Thirty Five Dollars and Twelve Cents (\$25,135.12), in United States currency, which money was in the care, custody, control, management and possession of the said Franklin National Bank, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation. (Title 18, United States Code, §2113(a) and §2).

COUNT TWO

On or about the 3rd day of May, 1971, within the Eastern District of New York, the defendants EDWARD PRAVATO and SALVATORE POLISI, knowingly and wilfully, by force, violence, and intimidation, did take from the person and presence of employees of the Franklin National Bank, 249-46 Horace Harding Boulevard, Queens, New York, approximately Twenty Five Thousand One Hundred Thirty Five Dollars and Twelve Cents (\$25,135.12) in United States currency, which money was in the care, custody, control, management and possession of the said Franklin National Bank the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation and in commission of this act and offense the defendants EDWARD PRAVATO and SALVATORE POLISI did assault and place in jeopardy the lives of the said bank employees, as well as the lives of others persons present by the use of a dangerous weapon. (Title 18, United States Code, §2113(d).)

COUNT THREE

On or about and between the 1st day of May, 1971, and the 3rd day of May, 1971, both dates being approximate and inclusive, within the Eastern District of New York, the defendants

EDWARD PRAVATO and SALVATORE POLISI did knowingly and wilfully conspire to commit an offense against the United States, in violation of Title 18, United States Code, §2113(a)(d) and §2, by conspiring to take from the person and presence of employees of the Franklin National Bank, 249-46 Horace Harding Boulevard, Queens, New York monies and things of value, which monies and things of value were then and there insured by the Federal Deposit Insurance Corporation and in commission of this act and offense the defendants did conspire to assault and place in jeopardy the lives of the said bank employees, as well as the lives of other persons present by the use of a dangerous weapon. (Title 18, United States Code, §371).

In furtherance of the said unlawful conspiracy and for the purposes of effecting the objectives thereof, the defendants EDWARD PRAVATO and SALVATORE POLISI committed the following

O V E R T A C T S

1. The Grand Jury repeats and realleges each and every allegation contained in Counts One and Two as if more fully

set forth herein.

A TRUE BILL

FOREMAN

UNITED STATES ATTORNEY

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x
UNITED STATES OF AMERICA, :
- against - :
SALVATORE POLES, :
Defendant. :
----- x

72-CR-390

United States Courthouse
Brooklyn, New York

December 13, 1974
11:30 o'clock a.m.

B e f o r e:

HONORABLE EDWARD R. NEAHER, U.S.D.J.

HENRI LE GENDRE
ACTING OFFICIAL COURT REPORTER

A P P E A R A N C E S:

DAVID G. TRAGER, ESO.,
United States Attorney
for the Eastern District of New York

BY: S. KIMELMAN, ESO., and
KENNETH KAPLAN, ESO.,
Assistant United States Attorneys

M. COIRO, ESO.,
Attorney for Defendant.

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THE CLERK: Criminal cause for sentencing
U.S.A. versus Salvatore Polesi.

MR. SHARGELL: Your Honor, I outlined to Mr.
Kaplan and Mr. Kimelman the problem I saw this morning
in reading the Probation Report, and which I indicated
to your Honor prior to Mr. Kaplan's appearance. I
would like to succinctly state the problem.

I have been before your Honor several times.
I am being as cautious as I can about overstepping
the grounds of propriety but the Government, the Court
and the defendant may save us a lot of time as to the
direction we are going in. We have a report here that
in my mind at least as defense counsel supports an
underlined basis for a motion to set aside the verdict
and which would necessarily require a hearing to be
held as to whether Mr. Polesi was competent at the
time of the trial or at least competent at the time
this act was committed, the bank robbery.

The report indicates that he needs care, he
needs medication. He is one hundred percent disability
and he has had this condition for some time.

I would like to ask the Court this question,
if I may?

If your Honor's intention was to send him to a
hospital pursuant to the report I don't think it's

1 necessary to move to set aside this verdict.

2 I think the man needs hospitalization. If your
3 Honor is suggesting however that ordinary imprisonment
4 would be imposed then I think it incumbent upon myself
5 to seek this relief.

6 What I'm saying, if your Honor is sending him
7 to a hospital, any kind of confinement, I don't think
8 there would be any motion or appeals or anything
9 else; However if your Honor's inclination is to send
10 him to a prison I'm obliged to move in that fashion.

11 THE COURT: The classification I believe you
12 have read indicates that he undoubtedly would benefit
13 by some psychiatric care, but so far as I'm aware, while
14 I can recommend for example to the Attorney General
15 that he be incarcerated at Springfield Medical Center
16 it would be entirely up to the Bureau of Prisons to
17 decide whether that is the appropriate place for him
18 to go.

19 That is out in Missouri, that's quite a distance
20 from his family and so forth.

21 I have to say in viewing these matters again
22 I have come to the conclusion that while he has emotional
23 difficulties on the basis of what I see here, it can't
24 be said from my reading that he was incompetent at the
25 time of the trial. There is one report dated -- this

1 trial was held in March, I think it was of 1974 and
2 early April and after the trial I believe he went
3 into the hospital for awhile.

4 There is a report which I'm sure you have seen
5 which indicates that he was hospitalized then. It
6 would be difficult for me to believe that that state
7 of competency suddenly returned after the trial.

8 I do think the man has emotional problems.

9 I would have to be candid with you I can only
10 sentence him, and I believe he'll have to be incar-
11 cerated. I can recommend that they send him out to
12 Springfield Medical Center in the light of the classifi-
13 cation report, but there is, and I really must say,
14 I know you indicated earlier your desire, brought up
15 the question of adjournment.

16 My own question is this, I should go ahead and
17 sentence him. If within the next four months, five
18 months, I suppose one of the things you are going to
19 do is probably prosecute an immediate appeal in any
20 event, but coupled in conjunction with that, he has
21 had an extensive history of treatment at the Veteran's
22 Hospital somewhere in Brooklyn.

23 Those records indicate to you questions now
24 mentioned, then I suppose you could always come in and
25 move to set aside the conviction, judgement of the

1 conviction.

2 MR. KAPLAN: May I make a comment at this point?

3 From my knowledge of the case it seems that
4 Mr. Polesi's prior history was that -- a medical
5 disability, but never of any psychiatric disability.

6 I think the records at the Veteran's Hospital,
7 as I'm informed by Mr. Coiro, will so-confirm that
8 contention.

9 In addition I would indicate to the Court that
10 such a motion for a new trial or judgement of acquittal
11 at this time is beyond the period indicated by the
12 Federal rules of criminal procedure.

13 THE COURT: On the grounds of newly discovered
14 evidence it might be a possibility. I don't know.
15 The classification report goes into some of his
16 psychiatric aspects. I'm simply saying what I can do
17 is impose the sentence, recommend that he be incar-
18 cerated at Springfield and see what happens. It
19 seems to me this matter has gone on long enough and
20 I think it's best to impose the sentence.

21 MR. SHARGELL: If your Honor's inclination is
22 to sentence him today, may I make a record in open
23 Court regarding this application that I have formally
24 moved to set aside the verdict.

25 THE COURT: All right go ahead.

1 Mr. Shargell, you are appearing of counsel here
2 with Mr. Coiro and you have had the opportunity, I
3 take it, to read the pre-sentence and classification
4 report concerning the defendant.

5 MR. SHARGELL: I have, sir.

6 THE COURT: Is there any reason why sentence
7 should not be imposed on the defendant at this time.

8 MR. SHARGELL: May it please the Court, there
9 is a legal reason why this defendant should not be
10 sentenced at the present time, and I would like while
11 I have my mind on it is to mark both the pre-sentence
12 report and the pre-sentence study, the classification
13 study as defense Exhibit A and B respectfully.

14 THE COURT: You mean to have copies of those
15 marked?

16 MR. SHARGELL: Yes.

17 THE COURT: Well, all right.

18 THE CLERK: It's a Court record, deemed marked.

19 THE COURT: The important thing is they should
20 not be made a part of the public file in this case.

21 MR. SHARGELL: My further suggestion is that
22 they be sealed for review by the United States Court of
23 Appeals.

24 THE COURT: Suppose we do that. I believe their
25 procedure is to have them marked in that manner.

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I suggest that the pre-sentence, a copy of it
be marked Court Exhibit 1; the classification report
be marked Court Exhibit 2, both of them be placed
in an envelope sealed in a file not to be opened
except on orders of a Judge; either in Court or the
United States Court of Appeals.

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MR. SHARGELL: May it please the Court, at this
time I would respectfully move pursuant to Rule 29
and Rule 33 of the Federal Rules of Criminal Procedure
for either a new trial or an order setting aside the
verdict of the Jury on the grounds that there is a
reasonable basis to believe, based on the pre-sentence
study and the report, that this individual Salvatore
Polesi was incompetent to stand trial, perhaps incom-
petent at the time that the offense was allegedly com-
mitted; and further that he's incompetent to be sen-
tenced by your Honor this morning.

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I do this and note for the record, I do this
based upon the report furnished pursuant to 4208(b).
I would note further, your Honor, and request that
an evidenciary hearing be held wherein evidence could
be presented before the Court and evidence could be
presented by the Government to determine whether Mr.
Polesi is so competent.

THE COURT: Well, I'm going to deny the motions

1 at this time and believing on the basis of the Pro-
2 bation Report, and on the basis of the classification
3 report, as I have read them, that the defendant who
4 has an IQ of 114 indicating above-average intelligence
5 has certain emotional problems which have been a cause
6 of some distress.

7 I see nothing in these reports suggesting to
8 the Court a basis for holding an evidenciary hearing
9 on the state of his mentality, even at the time of
10 the crime in question, I believe occurred in accordance
11 with the indictment of May of 1971, or indicating his
12 inability to stand trial which took place in March,
13 I believe it was 1974, so I will deny those motions.

14 MR. SHARGELL: Note my objection most respect-
15 fully, your Honor.

16 THE COURT: Now, are you going to speak on behalf
17 of the defendant?

18 MR. SHARGELL: Yes, I will.

19 If I may, I know your Honor has a full and com-
20 plete Probation Report before you. I know your Honor
21 is quite familiar with both the background of this case
22 and the background of Mr. Polesi.

23 Your Honor noted to me on the record that this
24 man has suffered from tremendous emotional problems.
25 I'm not minimizing the nature of the offense. You note

1
2 also that Mr. Polesi has steadfastly maintained his
3 innocence. In view of the complete, very complete
4 probation report before you, which notes incidentally
5 that this man has always maintained close family ties,
6 he's apparently a very sensitive individual as far as
7 his family obligation, I would most respectfully ask
8 your Honor in light of the man's psychiatric back-
9 ground, your Honor be as lenient as he possibly can,
10 recognizing this individual who stands before you
11 is a sick individual.

12 The extent of his illness is something that
13 may have to be litigated but nevertheless this man
14 stands before you as an ill person, and I would ask
15 your Honor to treat him as an ill person rather than
16 in the ordinary situation that this crime calls for.

17 THE COURT: Does Mr. Polesi wish to say anything
18 to the Court on his own behalf before sentence is im-
19 posed?

20 THE DEFENDANT: No sir

21 THE COURT: Now, the Court, as you indicated.
22 Shargell reviewed very carefully both the pre-sentence
23 report and classification report and considered letters
24 from both the mother-in-law of the defendant Mrs.
25 Phyllis Noto, from the defendant's wife as well as the
various information supplied by his counsel Mr. Coiro

1 from time to time. I cannot, of course, leave aside
2 the fact that the defendant was found guilty by a Jury
3 of a very serious crime, an armed bank robbery. I
4 recognize at the time he was approximately twenty-
5 four years of age when that crime occurred. However,
6 there are certain aspects of his prior record which
7 is very troubling to the Court. I noticed the robbery
8 was committed with an older man, he was also convicted
9 as his co-defendant, had a long history of this time
10 of criminal activity, indicating that the defendant
11 got in with the wrong type of company and unfortunate
12 for him perhaps, taking into account the various light
13 thrown on his personality and emotional problems.

14 The Court in sentencing the defendant believes
15 that what he requires is some structured care, counsel-
16 ling, and, therefore, I'm going to impose a sentence
17 of eight years on Count 1, and a sentence of eight
18 years on Count 2 to run concurrently.

19 I'm prepared to recommend that the Attorney
20 General consider incarcerating the defendant at the
21 Springfield Medical Center in Missouri for such time
22 as may be necessary, for such time he may receive
23 proper medical care as indicated by his prior record
24 from the Veteran's Administration Hospitals.

25 MR. SHARGELL: I believe sentencing him on the

1 second count is erroneous, most respectfully, because
2 apparently in United States against Provada, --

3 THE COURT: Two counts, I understand. I under-
4 stand that and I suppose in the light of that opinion
5 I should properly consider Count 1 merged in Count 2
6 and impose but one eight year sentence.

7 I'll amend the sentences.

8 The Court will view Count 1 the bank larceny,
9 bank robbery, merged in Count 2, the armed robbery,
10 and so the sentence will be eight years on Count 2.

11 MR. SHARGELL: May it please the Court as your
12 Honor is aware and as I've indicated to your Honor, --

13 THE COURT: Incidentally, I have one other thing
14 I wish to add.

15 I wish the sentence to be imposed pursuant to
16 the provisions of Section 4208(a)(2) which will enable
17 the Bureau of Prisons to decide on the basis of such
18 medical or other care, and the defendant's efforts
19 during confinement to rehabilitate himself to permit
20 his release on parole at any time in the discretion
21 of the Board of Parole.

22 MR. SHARGELL: May it please the Court, as I've
23 indicated I failed to file a timely notice of appeal.
24 Your Honor indicated in your remarks that this is a
25 1971 case except for the time Mr. Polesi was incarcerated

1 pursuant to the provisions of 4208(b). He has remained
2 amenable on the case over a number of years. Your
3 Honor recognizes from the Probation Report this indi-
4 vidual has very strong family ties:

5 I would ask your Honor to reinstate the bail
6 so we'll have bail pending appeal.

7 I do not believe this appeal is frivolous. There
8 is a good question whether a hearing should be afforded
9 and I most respectfully ask your Honor to continue or
10 to reinstate the bail.

11 THE COURT: Before I deal with that I consider
12 myself obliged to inform the defendant that of course
13 he has a right of appeal and that if he's unable to
14 pay the cost of such appeal he may apply to the Court
15 for release to appeal in forma pauperis.

16 MR. SHARGELL: I've been retained.

17 THE COURT: To prosecute an appeal in his behalf?

18 MR. SHARGELL: I assure your Honor that the appeal
19 will be prosecuted in expeditious fashion.

20 I believe the last time there was a 50,000 PRB
21 bond by property or house belonging to the family. I
22 think one thing is very clear from that Probation
23 Report, this man isn't running away and giving up a house.
24 I think his family ties are too strong. I think his
25 obligation to his family is very strong. The purpose

1 of bail pending appeal is primarily to assure that
2 this man will return to Court. He has given no indi-
3 cation that he would not.

4 MR. KAPLAN: The Government would strenuously
5 oppose Mr. Polesi being released on bail under any
6 condition. As Mr. Shargell previously indicated, the
7 man, as he believes, is a sick individual and needs
8 treatment. Now he indicates that the man should be
9 released on bail to go out into the street. The posi-
10 tion here is inconsistent. In any event the appeal as
11 the Government sees it is frivolous. All the issues
12 have been decided in the Pravada appeal.

13 I don't see any conceivable issue that might
14 come before the Court of appeals other than the one
15 which Mr. Shargell now raises.

16 Now, that issue of mental competence is one that
17 bears directly on whether the man should be institutionalized
18 or not institutionalized. Therefore, it seems that the
19 man, if they believe he's mentally incompetent, or
20 committed the crime under some mental defect, he should
21 be institutionalized during this interim. I don't
22 see under what claim they would have the man go out on
23 the street as a normal man. The Government's position
24 is this man is a very dangerous man; it was a very dan-
25 gerous crime he committed with a gun. I don't see how

1 he could walk out on the street at this point.

2 MR. SHARGELL: Mr. Kaplan describes Mr. Polesi
3 as a dangerous individual. This is not a crime that
4 occurred in 1974 or 1973 and everyone rushed into a
5 courtroom. This is a crime that happened in 1971.

6 There have been no accusations, arrest, or
7 prosecutions of any sort with respect to Mr. Polesi's
8 conduct, number one, during those three years.

9 This is reflected in the report. Mr. Polesi
10 on a regular basis, without missing, got himself
11 medical care. He was on an out-patient basis at the
12 Veteran's Hospital. This a man that can take care of
13 himself in the sense, recognizing his medical problem
14 and attending to it; never had to go looking for him.

15 The hospital never had to go looking for him.
16 He knows he needs medication. He knows he needs care.
17 I submit to your Honor the care he could get at the
18 V.A. hospital is much better than the care he'll get
19 at West Street.

20 This man has a history of taking thorazine.
21 When I asked him why he seemed so apprehensive this
22 morning, he was not given medication this morning
23 where he needs that medication. He was out for three
24 years.

25 MR. KAPLAN: Well, that's not the evidence that

1 we have We can hardly prove any cases beyond a
2 reasonable doubt that the man committed --

3 MR. SHARGELL: That's the standard in America.

4 MR. KAPLAN: We are talking about a man who
5 may be a danger to society. The Government can indicate
6 that the man was involved in this criminal activity.

7 MR. SHARGELL: I would like to have a hearing
8 on that and see what activities he committed.

9 MR. KAPLAN: In addition, as far as the man's
10 reliability in coming before the Court, as your
11 Honor recalls, it took the Government about seven
12 weeks to get the man for sentence. We tried to get
13 him again, he kept hiding on us. He kept putting him-
14 self in hospitals. As far as I'm concerned the man is
15 a manipulator.

16 He never would come before the Court when his
17 lawyer was advised. We could never find him.

18 It's inconceivable that now, somehow the situation
19 is changed.

20 MR. SHARGELL: During the times that he was
21 unable, Mr. Kaplan describes he was in a hospital.

22 THE COURT: I know but I'm just divided of the
23 need for the defendant to be under immediate supervision,
24 so I will deny your application. I will give you a time,
25 of course, to make an application to the Circuit Court

1 on the matter of appeal;

2 MR. COIRO: Thank you, Judge Neaher.

3 I have one request that the defendant's family
4 is here, would your Honor permit a short visit with
5 the defendant.

6 THE COURT: Of course, Mr. Coiro.

7 MR COIRO: Thank you very much

8 THE COURT: I consider Count 1 merged with
9 Count 2, it's a 4208(b)(2).

10 THE CLERK: They have thirty days to file a
11 notice of appeal.

12 (Whereupon Court stood in recess for the day
13 in this matter.)

14 * * *

JUDGMENT AND PROBATION/COMMITMENT ORDER

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
-----X
UNITED STATES OF AMERICA,

v.

No. 72 CR 390

SALVATORE POLISI,

Defendant.

-----X

In the presence of the attorney for the government, the defendant appeared in person on this date, (12-13-1974) with counsel, M. Coiro, Esq., of counsel, Gerald L. Shargel, Esq.
PLEA: NOT GUILTY

There being a verdict of GUILTY in count 1 to be merged into count 2.

Defendant has been convicted as charged of the offense(s) of violating T-18, U.S. Code, Secs. 2113(a) & (d) in that on or about May 3, 1971, the defendant, with another, knowingly and wilfully, by force, violence and intimidation, did take from the presence of employees of the Franklin National Bank, Queens, N.Y., approximately \$25,135.12 in U.S. currency, which money was in the care, custody, control, management and possession

of said bank, the deposits of which were then and there insured by the Federal Deposit Insurance Corp. and did place in jeopardy the lives of said persons by means of a dangerous weapon.

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment of 8 years on count 2 pursuant to T-18, U.S. Code, Sec. 4208(a)(2). Count 1 to be merged into count 2.

The court orders commitment to the custody of the Attorney General and recommends that the defendant be incarcerated at Springfield Medical Center in Missouri for purposes of psychiatric treatment.

/s/

Edward R. Neaher
U.S. District Judge

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

v.

No. 72 CR 390

SALVATORE POLISI,

Defendant.

-----X

S I R :

PLEASE TAKE NOTICE that SALVATORE POLISI hereby
appeals to the United States Court of Appeals for the Second
Circuit from a judgment of conviction entered against him by
the Honorable Edward R. Neaher, United States District Judge
for the Eastern District of New York on December 13th, 1974,
wherein the defendant was convicted of violating Title 18,
United States Code, Section 2113. The defendant was sentenced
upon said conviction to eight years imprisonment pursuant to
the provisions of Title 18, United States Code, Section
4208(a)(2).

PLEASE TAKE FURTHER NOTICE that the defendant also

appeals from an Order of the Court denying his Motion for a new trial, said Order entered on December 13th, 1974.

Dated: New York, New York
December 13th, 1974.

Yours, etc.

LA ROSSA, SHARGEL & FISCHETTI
Attorneys for Defendant
SALVATORE POLISI
Office & P.O. Address
522 Fifth Avenue
New York, New York 10036

BY: _____
GERALD L. SHARGEL
A Member of the Firm

TO:

HON. DAVID J. TRAGER
United States Attorney
Eastern District of New York
United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

DEFENDANT IS PRESENTLY INCARCERATED.



RECEIVED
U.S. ATTORNEY

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EAST. DIST. N.Y.

Robert H. H. H.

Service of ^{Two (2)} ~~three (3)~~ copies of the within
Appendix is hereby admitted
this day of

.....
Attorney(s) for